Supreme Court, U.S.
FILED
JUL - 8 2016
OFFICE OF THE CLERK

No. 15-7250

In The Supreme Court of the United States

MARCELO MANRIQUE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

JOINT APPENDIX

MICHAEL CARUSO
Federal Public Defender
PAUL M. RASHKIND*
Assistant Federal Public Defender
Chief, Appellate Division
R. D'ARSEY HOULIHAN
Assistant Federal Public Defender
OFFICE OF THE FEDERAL PUBLIC DEFENDER
SOUTHERN DISTRICT OF FLORIDA
150 West Flagler Street, Suite 1500
Miami, Florida 33130-1555
(305) 536-6900
paul_rashkind@fd.org

Counsel of Record

Counsel for Petitioner

IAN HEATH GERSHENGORN*
Acting Solicitor General
LESLIE R. CALDWELL
Assistant Attorney General
ALLON KEDEM
Assistant to the Solicitor General
SANGITA K. RAO
Attorney
DEPARTMENT OF JUSTICE
Washington, D.C. 20530-0001
(202) 514-2217
SupremeCtBriefs@usdoj.gov

Counsel for Respondent

Petition For Writ Of Certiorari Filed December 2, 2015
Certiorari Granted April 25, 2016

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

Page

Docket of Southern District of Florida, Case No. 1:14-cr-20064 1

Docket of Eleventh Circuit Court of Appeals, Case No. 14-13029 8

Information (Jan. 31, 2014) 12

Factual Proffer (Apr. 3, 2014) 16

Plea Transcript, Excerpt (Apr. 3, 2014) 20

Sentencing Transcript, Excerpt (June 23, 2014) 26

Judgment Imposing Sentence (June 24, 2014) 31

Notice of Appeal (July 8, 2014) 42

Minutes of Restitution Hearing (Sept. 17, 2014) 45

Restitution Hearing Transcript (Sept. 17, 2014) 46

Amended Judgment Imposing Sentence (Sept. 18, 2014) 66

Decision of the Court of Appeals for the Eleventh Circuit, *United States v. Marcelo Manrique* (July 15, 2015) 78

Order of the Court of Appeals for the Eleventh Circuit Denying Rehearing and Rehearing En Banc (Sept. 11, 2015) 86

U.S. District Court
Southern District of Florida (Miami)
CRIMINAL DOCKET FOR
CASE #: 1:14-cr-20064-JEM All Defendants

Case title: USA v. Manrique
Magistrate judge case number: 1:14-mj-02030-PAW

Date Filed: 01/31/2014
Date Terminated: 06/24/2014

Assigned to: Judge Jose E. Martinez

Appeal court case number: 14-13029-B

Defendant (1)

Marcelo Manrique
02081-104
YOB: 1989; ENGLISH
TERMINATED. 06/24/2014

Pending Counts	**Disposition**
18:2252.F POSSESSION OF CHILD PORNOGRAPHY (1)	AMENDED: IMPRISONMENT:72 months; SUPERVISED RELEASE: Term of life; ASSESSMENT: $100.00; RESTITUTION: $4,500.00. PRIOR JUDGMENT: IMPRISONMENT:72 months; SUPERVISED RELEASE: term of life; ASSESSMENT: $100.00. Surrender: 6/23/14 at 3:15PM

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

18:2252A.F; ACTIVITIES RE: MATERIAL CONSTITUTING/ CONTAINING CHILD PORNOGRAPHY

Plaintiff

USA

Date Filed	#	Docket Text
01/10/2014	1	COMPLAINT as to Marcelo Manrique (1). (aw) [1:14-mj-02030-PAW] (Entered: 01/13/2014)
01/10/2014		Arrest of Marcelo Manrique (cg1) [1:14-mj-02030-PAW] (Entered: 01/14/2014)
01/31/2014	15	INFORMATION as to Marcelo Manrique (1) count(s) 1. CRIMINAL FORFEITURE. (nf) (Entered: 01/31/2014)
02/03/2014	17	WAIVER OF INDICTMENT by Marcelo Manrique (cg1) (Entered: 02/03/2014)

04/03/2014	28	Minute Entry: for proceedings held before Judge Jose E. Martinez: Change of Plea Hearing as to Marcelo Manrique held on 4/3/2014 Marcelo Manrique (1) Guilty Count 1. * * * (Entered: 04/03/2014)
04/03/2014	29	FACTUAL PROFFER: Exhibit #1 as to Marcelo Manrique (wh) (Entered: 04/03/2014)
04/03/2014	30	PLEA AGREEMENT: Exhibit #2 as to Marcelo Manrique (wh) (Entered: 04/03/2014)
05/01/2014	37	DRAFT Disclosure of Presentence Investigation Report of Marcelo Manrique. This is a limited access document. Report access provided to attorneys Brooke C. Watson, Raymond D'Arsey Houlihan, III by USPO (Attachments: # 1 Position of Parties) (kme) (Entered: 05/01/2014)
06/05/2014	42	FINAL Addendum 1 Disclosure of Presentence Investigation Report of Marcelo Manrique. This is a limited access document. Report access provided to attorneys Brooke C. Watson, Raymond D'Arsey Houlihan, III by USPO (Attachments: # 1 Addendum) (kme) (Entered: 06/05/2014)
06/24/2014	52	Minute Order for proceedings held before Judge Jose E. Martinez: granting 49 Sealed Motion as to Marcelo Manrique (1); denying 50 Motion to Continue Sentencing as to

		Marcelo Manrique (1); Sentencing held on 6/23/2014 as to Marcelo Manrique. * * * (Entered: 06/24/2014)
06/24/2014	53	JUDGMENT as to Marcelo Manrique (1), Count(s) 1, IMPRISONMENT:72 months; SUPERVISED RELEASE: term of life; ASSESSMENT: $100.00. Surrender: 6/23/14 at 3:15PM Signed by Judge Jose E. Martinez on 6/23/2014. (cbr) (Entered: 06/24/2014)
06/26/2014	54	PAPERLESS ORDER SETTING Restitution Hearing as to Marcelo Manrique re 53 Judgment. Restitution hearing set for 8/22/2014 01:30 PM in Miami Division before Judge Jose E. Martinez. Signed by Judge Jose E. Martinez on 6/26/2014. (wh) (Entered: 06/26/2014)
07/08/2014	55	NOTICE OF APPEAL by Marcelo Manrique Re: 53 Judgment. Filing fee $505.00.. USA/FPD Filer – No Filing Fee Required. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Houlihan, Raymond) (Entered: 07/08/2014)
07/08/2014		Transmission of Notice of Appeal and Docket Sheet as to Marcelo

		Manrique to US Court of Appeals re 55 Notice of Appeal – Final Judgment, Notice has been electronically mailed. (hh) (Entered: 07/08/2014)
07/09/2014	56	Acknowledgment of Receipt of NOA from USCA as to Marcelo Manrique re 55 Notice of Appeal – Final Judgment, date received by USCA: 7/8/14. USCA Case Number: 14-13029-B. (hh) (Entered: 07/09/2014)
07/18/2014	58	TRANSCRIPT INFORMATION FORM as to Marcelo Manrique re 55 Notice of Appeal – Final Judgment, filed by Marcelo Manrique. Plea and Sentencing transcript(s) ordered. Order placed by R. D'Arsey Houlihan. Email sent to Court Reporter Coordinator. (Houlihan, Raymond) (Entered: 07/18/2014)
08/12/2014	60	TRANSCRIPT of change of plea as to Marcelo Manrique held on 4-3-2014 before Judge Jose E. Martinez, 1-24 pages, re: 55 Notice of Appeal – Final Judgment, * * * (Entered: 08/12/2014)
08/12/2014	61	TRANSCRIPT of sentencing hearing as to Marcelo Manrique held on 6-23-2014 before Judge Jose E. Martinez, 1-41 pages, re: 55 Notice of Appeal – Final Judgment, * * * (Entered: 08/12/2014)
08/19/2014	62	NOTICE RESET HEARING as to Marcelo Manrique. Restitution Hearing reset for 9/17/2014 01:30 PM in

Miami Division before Judge Jose E. Martinez. (wh) (Entered: 08/19/2014)

09/15/2014 65 PAPERLESS/NOTICE OF HEARING (TIME ONLY) as to Marcelo Manrique. Restitution Hearing set for 9/17/2014 now at 2:30 PM in Miami Division before Judge Jose E. Martinez. (wh) (Entered: 09/15/2014)

09/17/2014 66 Minute Entry for proceedings held before Judge Jose E. Martinez: Restitution Hearing held on 9/17/2014 as to Marcelo Manrique. * * * (Entered: 09/17/2014)

09/18/2014 67 AMENDED JUDGMENT as to Marcelo Manrique (1), Count(s) 1, AMENDED: IMPRISONMENT:72 months; SUPERVISED RELEASE: term of life; ASSESSMENT: $100.00; RESTITUTION: $4,500.00. PRIOR JUDGMENT: IMPRISONMENT:72 months; SUPERVISED RELEASE: term of life; ASSESSMENT: $100.00. Surrender: 6/23/14 at 3:15PM Signed by Judge Jose E. Martinez on 9/18/2014. (cbr) (Entered: 09/18/2014)

09/19/2014 68 TRANSCRIPT INFORMATION FORM as to Marcelo Manrique re 55 Notice of Appeal – Final Judgment, filed by Marcelo Manrique. Restitution transcript(s) ordered. Order placed by R. D'Arsey Houlihan. Email sent to Court Reporter Coordinator. (Houlihan, Raymond) (Entered: 09/19/2014)

11/04/2014	70	TRANSCRIPT of restitution hearing as to Marcelo Manrique held on 9-17-2014 before Judge Jose E. Martinez, 1-19 pages, re: 55 Notice of Appeal – Final Judgment, * * * (Entered: 11/04/2014)
11/04/2014	71	TRANSCRIPT of restitution hearing as to Marcelo Manrique held on 9-17-2014 before Judge Jose E. Martinez, 1-19 pages, re: 55 Notice of Appeal – Final Judgment, * * * (Entered: 11/04/2014)
01/27/2015	76	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: 55 Notice of Appeal – Final Judgment, Appeal No. 14-13029-BB. The entire record on appeal is available electronically. (hh) (Entered: 01/27/2015)
09/21/2015	77	MANDATE of USCA, AFFIRMED IN PART, DISMISSED IN PART. We affirm Manrique's sentence as set forth in the district court's original judgment, and dismiss his challenge to the restitution amount reflected in his amended judgment for lack of jurisdiction as to Marcelo Manrique re 55 Notice of Appeal – Final Judgment, ; Date Issued: 9/21/15 ; USCA Case Number: 14-13029-BB (hh) (Entered: 09/22/2015)

General Docket
United States Court of Appeals
for the Eleventh Circuit

Court of Appeals Docket #:
14-13029 **Docketed**: 07/08/2014
USA v. Marcelo Manrique **Termed**: 07/15/2015
Appeal From: Southern District of Florida
Fee Status: IFP Granted

Case Type Information:
1) Criminal
2) Direct Criminal
3) –

Originating Court Information:
District: 113C-1 : 1:14-cr-20064-JEM-1
Court Reporter: Dawn Whitmarsh
Sentencing Judge: Jose E. Martinez,
U.S. District Judge
Date Filed: 01/31/2014
Date NOA Filed:
07/08/2014

Prior Cases:
None

Current Cases:
None

UNITED STATES OF AMERICA

Plaintiff-Appellee

versus

MARCELO MANRIQUE

Defendant-Appellant

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCELO MANRIQUE,

Defendant-Appellant.

07/08/2014 CRIMINAL APPEAL DOCKETED. Notice of appeal filed by Appellant Marcelo Manrique on 07/08/2014, Fee Status: IFP Granted.

07/18/2014 TRANSCRIPT INFORMATION FORM SUBMITTED by Attorney Raymond D'Arsey Houlihan, III for Appellant Marcelo Manrique. Transcript(s) ordered, (ECF: Raymond Houlihan)

08/20/2014 TRANSCRIPTS FILED: Transcript Order: Court Reporter: Dawn Whitmarsh, Filer: Marcelo Manrique, Dt. all Trans. Filed: 08/12/2014, Proceeding Type and Date: Sentencing 06/24/2014, Plea Hearing 04/03/2014.

09/19/2014	TRANSCRIPT INFORMATION FORM SUBMITTED by Attorney Raymond D'Arsey Houlihan, III for Appellant Marcelo Manrique. Transcript(s) ordered. (ECF: Raymond Houlihan)
09/23/2014	USDC Restitution Order as to Appellant Marcelo Manrique was filed on 09/18/2014. Docket Entry 67.
11/14/2014	TRANSCRIPTS FILED. Transcript Order: Court Reporter: Dawn Whitmarsh, Filer: Marcelo Manrique, Dt. all Trans. Filed: 11/04/2014, Proceeding Type and Date: Other Hearings 09/17/2014.
11/14/2014	Briefing Notice issued to Appellant Marcelo Manrique. The appellants brief is due on or before 12/15/2014. The appendix is due no later than 7 days from the filing of the appellant's brief.
12/22/2014	Appellant's brief filed by Marcelo Manrique. (ECF: Raymond Houlihan)
12/22/2014	Appendix filed [1 VOLUMES) by Appellant Marcelo Manrique. (ECF: Raymond Houlihan)
12/30/2014	Appellee's Brief filed by Appellee USA. (ECF: Phillip DiRosa)
02/09/2015	Reply Brief filed by Appellant Marcelo Manrique. (ECF: Raymond Houlihan)
07/15/2015	Opinion issued by court as to Appellant Marcelo Manrique. Decision: Affirmed in part and Dismissed in part. Opinion

	type: Non-Published. Opinion method: Per Curiam.
08/04/2015	Petition for rehearing en banc (with panel rehearing) filed by Appellant Marcelo Manrique. (ECF: Raymond Houlihan)
09/11/2015	ORDER: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellant Marcelo Manrique are DENIED. [7571685-1)
09/21/2015	Mandate issued as to Appellant Marcelo Manrique.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 14-20064-CR-MARTINEZ/GARBER
18 U.S.C. § 2252(a)(4)(B) & (b)(2)
18 U.S.C. § 2253

UNITED STATES OF AMERICA

vs.

MARCELO MANRIQUE,

Defendant. /

INFORMATION

(Filed Jan. 31, 2014)

The United States Attorney charges that:

On or about January 10, 2014, in Miami-Dade County, in the Southern District of Florida, the defendant,

MARCELO MANRIQUE,

did knowingly possess matter, that is, a generic desktop computer, which contained any visual depiction that had been shipped and transported using any means and facility of interstate and foreign commerce, and in and affecting interstate and foreign commerce, and which was produced using materials which have been so shipped and transported, by any means, including by computer, and the production of such visual depiction having involved the use of a minor engaged

in sexually explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and such visual depiction was of such conduct, in violation of Title 18, United States Code, Section 2252(a)(4)(B) and (b)(2).

Pursuant to Title 18, United States Code, Section 2252(b)(2), it is further alleged that such visual depiction involved a prepubescent minor or a minor who had not attained twelve years of age.

CRIMINAL FORFEITURE

1. The allegations of this Indictment are realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **MARCELO MANRIQUE**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 2252, as alleged in this Indictment, the following property will be forfeited to the United States pursuant to Title 18, United States Code, Section 2253:

(a) any visual depiction of a minor engaged in sexually explicit conduct, and any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Chapter 110, Title 18, United States Code;

(b) any property, real or personal, constituting or traceable to gross profits or other proceeds which the defendant obtained from such violation; and

(c) any property, real or personal, used or intended to be used to commit or to promote the commission of such violation and any property traceable to such property.

3. The property which is subject to forfeiture includes, but is not limited to, the following:

(a) A generic desktop computer;

(b) A Seagate Barracuda 7200.7 160 Gbytes hard drive;

(c) A Seagate "Barracuda" 3000 GB hard drive;

(d) A Western Digital 1.0TB hard drive;

(e) A Maxxtor hard drive;

(f) A Western Digital WD200 20.0 GB hard drive; and

(g) A FUJITSU hard drive model M2684TAU.

All pursuant to Title 18, United States Code, Section 2253, and the procedures set forth at Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Section 2253(b).

/s/ [Illegible]
WIFREDO A. FERRER
UNITED STATES ATTORNEY

/s/ BW
BROOKE C. WATSON
ASSISTANT UNITED STATES
ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 14-CR-20064-MARTINEZ

UNITED STATES OF AMERICA

v.

MARCELO MANRIQUE,

Defendant.

FACTUAL PROFFER

(Redacted)

(Filed Apr. 3, 2014)

If this matter were to proceed to trial, the Government would prove the stated facts beyond a reasonable doubt.

Based on an on-going investigation involving IP addresses associated with the suspected possession of child pornography, agents from the Department of Homeland Security ("HSI") conducted a "knock-and-talk" at [redacted] Miami, Florida 33196 on January 10, 2014. Agents were granted entry into the home by the legal residents of that home. Once inside, agents spoke to the residents of [redacted] including the defendant, Marcelo MANRIQUE. Agents explained that they were looking for evidence of contraband that may be located on computers within the home. The residents of [redacted]gave consent for Computer Forensic

Agents (CFA) to search their computers and electronic devices.

Agents then began to conduct interviews of the residents of [redacted] while the CFA conducted forensic previews of the computers and electronic devices on scene. When agents spoke to MANRIQUE, he indicated that the generic black desktop computer located in his bedroom belonged to him. He stated his profile on the desktop was password protected and that he did not share his password with anyone. MANRIQUE was given his *Miranda* warnings and waived them orally and in writing. During post *Miranda* statements, MANRIQUE admitted to downloading child pornography, which he knew was illegal, and stated he has been downloading child pornography for approximately 11 years. He claimed he believed he had 200 child pornography files saved on his desktop computer.

MANRIQUE gave oral and written consent to search his black generic desktop computer and provided agents with his password. The HSI CFA recovered over 300 files depicting child pornography from his generic desktop computer. The agents explained to MANRIQUE what was discovered and he acknowledged that he had downloaded the files. Some of the files recovered during the preview were:

a. **(~pthc Center~) (opva)(2012) HDV_0151 (5yo Sam nice bj)-** This was a movie file which, in part, depicts a minor female who appears to be under the age of 12, performing oral sex on an adult male. The adult male then ejaculates in her mouth.

b. **(HussyFan)(Pthc)(R@Ygold)(Babyshivid) Kitty1 [Blowjob cumshot inside mouth pedo illegal underage]-** This movie file, in part, depicts a minor female who appears to be under the age of 6, performing oral sex on an adult male. The adult male later ejaculates on the minor female.

c. **2010 pthc frifam fucking 4yo ass-** This movie file, in part, depicts an adult male anally penetrating a toddler with his penis. The toddler appeared to be under the age of 6.

The visual depictions of child pornography on MANRIQUE' s computer were each transported via the internet to the defendant's computer. Thus, each visual depiction of child pornography on the defendant's computer had been transported in interstate or foreign commerce. Furthermore, the images of child pornography were stored on the defendant's computer, the components of which (including the hard drives), were manufactured outside of the state of Florida, Thus, the government would prove that the defendant's computer is an instrumentality of interstate and foreign commerce.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 4/3/14 By: /s/ [Illegible] BW
Brooke C. Watson
ASSISTANT UNITED
STATES ATTORNEY

Date: 4/3/14 By: /s/ RDH
D'Arsey Houlihan
ATTORNEY FOR
DEFENDANT

Date: 4/3/14 By: /s/ M Manrique
Marcelo Manrique
DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 14-20064-CR-JEM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Miami, Florida
April 3, 2014

MARCELO MANRIQUE,

Defendant.

TRANSCRIPT OF
CHANGE OF PLEA HEARING
BEFORE THE HONORABLE JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

(EXCERPT)

APPEARANCES:

FOR THE PLAINTIFF:

United States Attorney's Office
BY: BROOKE C. WATSON, A.U.S.A.
99 N.E. 4th Street
Miami, Florida 33132

FOR THE DEFENDANT:

Federal Public Defender's Office
BY: RAYMOND D'ARSEY HOULIHAN, A.F.P.D.
150 West Flagler Street
Miami, Florida 33130

REPORTED BY:
DAWN M. WHITMARSH, RPR
Official Court Reporter
400 N. Miami Avenue, 10S03
Miami, Florida 33128
Telephone: 305-523-5598

* * *

[10] the visual depiction involved a prepubescent minor who had not attained the age of 12.

THE COURT: All right, sir. You heard what the government said. Do you understand that's what you're pleading guilty to?

THE DEFENDANT: Yes.

THE COURT: Now, is there – there is a forfeiture count. What are we talking about forfeiting?

MS. WATSON: The computer that was seized in this case that contained the child pornography.

THE COURT: Okay. You understand that they're also seeking to forfeit the computer that was used in this transaction. Do you understand that?

THE DEFENDANT: Yes. There's no way I can get the computer back without the hard drives?

THE COURT: No, apparently not. They want the entire computer because it was used in a crime.

THE DEFENDANT: Understood.

THE COURT: Would the government make a representation concerning the facts you would be prepared to prove at trial.

MS. WATSON: If this matter were to proceed to trial, the government would prove the following:

There was an ongoing investigation into a certain IP address that agents from the Department of Homeland Security believed was involved in the possession of child pornography.

[11] Agents conducted a knock and talk at [redacted] in Miami, Florida on January 10, 2014. Agents were allowed entry into the home by the legal residents of the home.

Once inside, they spoke to the individuals inside the home including Mr. Manrique, the defendant. Agents explained they were looking for evidence and contraband that may be located within the home and the residents of that home gave the computer forensic agents permission to search the computers and electronic devices within that home.

Agents conducted interviews of the residents of [redacted] while the computers were forensically analyzed. When agents spoke to Mr. Manrique, he indicated that the black generic desktop computer located in his bedroom belonged to him. He stated the profile on the computer was password protected and didn't share his password with anyone. Mr. Manrique was

given his *Miranda* warnings and waived them orally and in writing.

During post-*Miranda* statements, Mr. Manrique admitted to downloading child pornography, which he knew was illegal, and stated he's been downloading child pornography for approximately 11 years. He claimed he believed he had 200 pictures saved on his computer.

Mr. Manrique gave oral and written consent to search his black generic desktop computer, and agents recovered over [12] 300 files depicting child pornography from that computer.

Agents explained to Mr. Manrique what was discovered. He acknowledged that the downloaded files were his and that he in fact downloaded them.

Some of the files included minor females who appeared to be under the age of 12 performing oral sex on an adult male; a minor female who appeared to be under the age of six performing oral sex on an adult male, and an adult male anally penetrating a toddler with his penis.

The visual depictions of child pornography on Mr. Manrique's computer were each transferred via the internet to the defendant's computer. Thus, each visual depiction of child pornography on the defendant's computer had been transported in interstate or foreign commerce.

Furthermore, the images of child pornography were stored on the defendant's computer, the components of which, including the hard drives, were manufactured outside of the state of Florida. Thus, the government would prove that the defendant's computer is an instrumentality of interstate and foreign commerce.

THE COURT: All right, sir. You heard what the government said. Do you believe if this case were to go to trial, they could prove what they said?

THE DEFENDANT: I'm sorry. Can you repeat that?

THE COURT: Yes. You heard what the government said [13] they could prove if this case were to go to trial. Do you believe if this case were to go to trial, they could prove what they just said?

THE DEFENDANT: Yes.

THE COURT: Is it true?

THE DEFENDANT: Yes.

THE COURT: All right. I have here a document that says it's a factual proffer. It's three pages – yes, sir. I'm sorry. Go ahead.

THE DEFENDANT: Well, one thing that I would like to clarify is that when they – when I said since I was 13, I actually meant that was the first time I had seen it. And I had not started downloading it until many years later.

THE COURT: Okay. so that part of the factual proffer, you don't believe that they could prove – that you don't believe that you said that they – you had been downloading this for 11 years. what you said – what you believe you said was that you first saw this 11 years ago, and began downloading it a little bit later than that? Is that what you're saying?

MR. HOULIHAN: Judge, I think what he's saying is that he believes he may have said that, but he was mistaken when he said he downloaded it at 13. He actually saw it at 13, downloaded it and –

THE COURT: Sometime later.

MR. HOULIHAN: Yes, Judge.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 14-20064-CR-JEM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Miami, Florida
June 23, 2014

MARCELO MANRIQUE,

Defendant.

TRANSCRIPT OF
SENTENCING HEARING
BEFORE THE HONORABLE JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

(EXCERPT)

APPEARANCES:

FOR THE PLAINTIFF:

United States Attorney's Office
BY: ROBERT EMERY, A.U.S.A.
99 N.E. 4th Street
Miami, Florida 33132

FOR THE DEFENDANT:

Federal Public Defender's Office
BY: RAYMOND D'ARSEY HOULIHAN, A.F.P.D.
150 West Flagler Street
Miami, Florida 33130

REPORTED BY:
DAWN M. WHITMARSH, RPR
Official Court Reporter
400 N. Miami Avenue, 10S03
Miami, Florida 33128
Telephone: 305-523-5598

* * *

[38] THE COURT: The court has considered the statements of all the parties, the presentence report which contains the advisory guidelines and the statutory factors as set forth in 18 USC section 3553(a).

It is the finding of the court that the defendant is not able to pay a fine; however, restitution is mandatory.

It is the judgment of the court that the defendant, Marcelo Manrique, is to be committed to the Bureau of Prisons to be imprisoned for 72 months. I have done a downward variance because I do not believe the defendant is a danger for recidivism, I think that 72 months is sufficient but not excessive to prevent, to deter. I think under all of the guidelines under section 3553(a), that is a fair sentence.

It is further ordered that pursuant to 18 USC Section 3664(d)(5), the victims' losses are not yet ascertainable; therefore, the court will set a date of Friday August 22, 2014 at 1:30 p.m. for the final determination of the victims' losses.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of life. Within 72 hours of release, the defendant shall report in person to the probation office in the district where released. While on supervised release, the defendant shall not commit any crimes, shall be prohibited from possessing a firearm or other dangerous device, shall not possess a controlled substance, shall cooperate in the collection of DNA and shall comply with the [39] standard conditions of supervised release including the following special conditions:

Computer possession restriction, employer computer restriction disclosure, mental health treatment, self-employment restriction, no contact with minors, no contact with minors in employment, no involvement in youth organizations, sex offender treatment, restricted from possession of sexual materials, Adam Walsh Act search condition and sex offender registration as noted in part G of the presentence report.

The defendant shall immediately pay to the United States a special assessment of $100.

The total sentence: 72 months imprisonment, life supervised release, $100 special assessment.

The defendant's right, title and interest in the property identified in the preliminary order of forfeiture which has been entered by the court and is incorporated by reference herein is hereby forfeited.

Now that sentence has been imposed, does the defendant or his counsel object to the court's finding of fact or the manner in which sentence was pronounced?

MR. HOULIHAN: Judge, we object to the supervised release condition just based on the argument that I had made.

THE COURT: All right. Are there additional counts to be dismissed?

MR. EMERY: No, I don't believe, Your Honor. He's a [40] one count information.

THE COURT: All right. You have the right to appeal the sentence imposed. Any notice of appeal must be filed within 14 days after the entry of the judgment. If you're unable to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis.

I will put in my formal order that the defendant should be – I will recommend that the defendant be incarcerated as close to South Florida as is possible, commensurate with his background and the offense of which he stands convicted.

MR. HOULIHAN: Judge, in terms of surrender?

THE COURT: Yes.

MR. HOULIHAN: Can we get a surrender date?

THE COURT: I was going to remand him.

MR. HOULIHAN: In that case, Your Honor, what I'd ask is it possible that he self surrender right now and just walk downstairs and surrender himself to the marshals?

THE COURT: Yes, he can do that. How are we getting him there? well, if he doesn't show up, I can stop him before he leaves the building. so yes.

MR. HOULIHAN: We can have a court officer walk down with us.

THE COURT: Can he go to the lockup? There's not a lockup in this building, is there? It's across the street.

COURT SECURITY OFFICER: In 301 building.

* * *

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
v.	(Filed Jun. 24, 2014)
MARCELO MANRIQUE	Case Number: **14-20064-CR-MARTINEZ** USM Number: **02081-104** Counsel For Defendant: **Raymond D'Arsey Houlihan** Counsel For The United States: **Brooke Watson** Court Reporter: **Dawn Whitmarsh**

The defendant pleaded guilty to count(s) 1 of the Information.

The defendant is adjudicated guilty of these offenses:

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
18 U.S.C.§ 2252(a)(4)(B)	possession of material involving the sexual exploitation of minors	01/10/2014	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:
6/23/2014

/s/ Jose E. Martinez
Jose E. Martinez
United States District Judge

Date: 24 June 2014

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **72 months** as to Count One of the Information.

The court makes the following recommendations to the Bureau of Prisons: The defendant shall be assigned to a facility as close to South Florida as possible commensurate with his background and the offence of which he stands convicted.

The defendant shall surrender to the US Marshal for this District on or before June 23, 2014 at 3:15 pm.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____
at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

_____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **life** as to Count One.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The

defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere

and shall permit confiscation of any contraband observed in plain view of the probation officer;

11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

Adam Walsh Act Search Condition – The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any

internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Computer Possession Restriction – The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

Employer Computer Restriction Disclosure – The defendant shall permit third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon the defendant.

Mental Health Treatment – The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors – The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of 18 or with the victims.

No Contact with Minors in Employment – The defendant shall not be employed in a job requiring contact with children under the age of 18 or with the victims.

No Involvement in Youth Organizations – The defendant shall not be involved in any children's or youth organization.

Restricted from Possession of Sexual Materials – The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Self-Employment Restriction – The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Sex Offender Registration – The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

Sex Offender Treatment – The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination.

Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$100.00	$0.00	$0.00

The determination of restitution is deferred until 8/22/2014. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

NAME OF PAYEE	TOTAL LOSS*	RESTITUTION ORDERED	PRIORITY OR PERCENTAGE

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of $100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

CASE NUMBER DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)	**TOTAL AMOUNT**	**JOINT AND SEVERAL AMOUNT**

The Defendant's right, title and interest to the property identified in the preliminary order of forfeiture, which has been entered by the Court and is incorporated by reference herein, is hereby forfeited.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 14-20064-CR-MARTINEZ

UNITED STATES
OF AMERICA

Plaintiff,

v.

MARCELO MANRIQUE,

Defendant. /

NOTICE OF APPEAL

(Filed Jul. 8, 2014)

Notice is hereby given that Marcelo Manrique, defendant in the above named case, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the final judgment and sentence entered in this action on the 24th day of June, 2014.

Respectfully Submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

BY: s/R. D'Arsey Houlihan
R. D'Arsey Houlihan
Supervisory Assistant Federal
Public Defender
Florida Bar No. 100536
150 W. Flagler Street, Suite 1700
Miami, Florida 33130-1556
(305) 530-7000

(305) 536-4559, Fax
d'arsey_houlihan@fd.org, E-Mail

CERTIFICATE OF SERVICE

I hereby certify that on **July 8, 2014,** undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/R. D'Arsey Houlihan
R. D'Arsey Houlihan

SERVICE LIST
UNITED STATES v. MARCELO MANRIQUE
CASE NO. 14-20064-CR-MARTINEZ

United States District Court,
Southern District of Florida

R. D'Arsey Houlihan
Supervisory Assistant Federal Public Defender
150 W. Flagler Street, Suite 1700
Miami, Florida 33130-1556
(305) 530-7000
(305) 536-4559, Fax
E-mail: d'arsey_houlihan@fd.org

Brooke C. Watson
United States Attorney's Office
99 NE 4th Street
Miami, FL 33132
305.961.9070
Email: Brooke.Watson@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CRIMINAL MINUTES FOR
HON. JOSE E. MARTINEZ

Date: September 17, 2014 Case No: 14-20064-CR-MARTINEZ
Clerk: Wanda Holston Reporter: Dawn Whitmarsh
Interpreter: _____ Probation Officer: Marilys Martinez for Shannon Culberson

UNITED STATES OF AMERICA vs.
Marcelo Manrique

AUSA: Brooke Watson

Defendant(s) Counsel(s): D'Arsey Houlihan

Defendant(s) Present: X Not Present ___
In Custody X

Reason for hearing: Restitution Hearing

Result of hearing: Hearing Held

1. All parties present. Based on the materials submitted to the Court, a restitution amount is imposed. See Amended Judgement for details.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 14-20064-CR-JEM

UNITED STATES
OF AMERICA,

Plaintiff,

vs.

MARCELO MANRIQUE,

Defendant.

Miami, Florida
September 17, 2014

TRANSCRIPT OF RESTITUTION HEARING
BEFORE THE HONORABLE JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
United States Attorney's Office
BY: BROOKE WATSON, A.U.S.A.
99 N.E. 4th street
Miami, Florida 33132

FOR THE DEFENDANT:
Federal Public Defender's Office
BY: RAYMOND D'ARSEY HOULIHAN, A.F.P.D.
150 West Flagler Street
Miami, Florida 33130

REPORTED BY: **DAWN M. WHITMARSH, RPR**
Official Court Reporter
400 N. Miami Avenue, 10S03
Miami, Florida 33128
Telephone: 305-523-5598

[2] P-R-O-C-E-E-D-I-N-G-S

COURTROOM DEPUTY: Case number 14-20064-criminal-Martinez, United States of America versus Marcelo Manrique.

Counsel, please state your appearance.

MS. WATSON: Good afternoon, Brooke Watson on behalf of the United States.

THE COURT: Good afternoon, Ms. Watson.

MR. HOULIHAN: Good afternoon, Your Honor. D'Arsey Houlihan, Assistant Federal Public Defender on behalf of Mr. Manrique, who is present before the court.

THE COURT: Good afternoon.

I apologize for being late, I was in a meeting with Judge Gayles. That's what you get the big bucks for, Mr. Houlihan.

All right. Can I get an appearance from probation.

THE PROBATION OFFICER: Good afternoon, Your Honor. Marylis Martinez standing in for Shannon Culberson.

THE COURT: Good afternoon, Ms. Martinez.

All right. we're here on the restitution hearing on Mr. Marcelo Manrique. I've reviewed the memorandum prepared by the US Probation office, the original

judgment, the original presentence investigation and I'm ready to proceed at this time.

Ms. Watson, what do you want to present?

MS. WATSON: Your Honor, at this time it's my [3] understanding that as part of the probation packet, that you did information from Attorney Lenihan?

THE COURT: I did review that. I saw a letter that he had written.

MS. WATSON: As well as an affidavit.

What I can say is I have been in contact with the victims in this case who wanted to be notified about restitution. The "Angela" victim, through her attorney, was the only victim that indicated they were seeking restitution in this case. I informed them that, you know, in most of these – in most instances it's best to be present at a restitution hearing for the attorney to state their case. I also indicated that the defendant, Mr. Manrique, is indigent and that he may not be able to pay the amount that they were seeking.

THE COURT: Why is that different from any other restitution hearing that I've ever been at?

MS. WATSON: It's not. I just – in terms of my conversations with them. So what I did is, you know, I suggested resolving this case with a $1,000 to $1,500 restitution amount that both parties could agree on.

You know, the victims, you know, I think their position is that this child, who was three to four years old when these things were happening, is going to be dealing with this pain for the rest of their life.

THE COURT: I can understand that position.

[4] MS. WATSON: Hoping for, you know, some sort of gesture, some sort of restitution. You know, pursuant to 18 USC 2259, restitution is mandatory. I would suggest that though the victim and her attorney are not here, they did provide a sworn affidavit that outlined the proximate cause that they believe this defendant caused them, which under *Paroline versus United States* is the standard they're dealing with.

So they were requesting somewhere between, I think the bottom line was $7,320 to $11,740.

THE COURT: I thought it was 16,000?

MS. WATSON: 16,000 is on the front page. I was just going based on the proximate cause. I'm sorry. 16,000 is the high end and I believe –

THE COURT: 14,000 is the low end, isn't it?

MS. WATSON: Correct.

You know, I understand – you know, I had an opportunity to speak to counsel prior to the hearing. I know he wanted or – I don't want to speak for counsel, but it's my understanding –

THE COURT: 11,980 to 16,400 is the range.

MS. WATSON: Yes. I understand the wanting to cross examine the attorney. I believe that's what he represented to me, that he wanted a witness here that he could speak to.

But I will say that, you know, I believe that the government has provided an ample basis to support the [5] restitution that's being requested in this case under *Paroline versus the United States*, and under 18 USC 2259(b)(3)(f). We've demonstrated through these documents the mental – the medical bills that this victim has had to pay, the psychiatric bills that this victim has had to pay, the physical pain that this has caused her, the attorney's fees that she's endured and that she will continue to endure as this case continues to be litigated.

Again, this is something she's going to be dealing with for the rest of her life. The defendant's part of the overall phenomenon, that is the possession of child pornography in this case, caused the victim's general loss and as a result the government is seek something meaningful in terms of restitution, not a token amount.

THE COURT: How in the world can I come up with anything other than what they ask for? I mean, I don't understand why I could make, let's say, $2,750. I mean, how can I make something up?

MS. WATSON: I think what we were trying to do was come to a resolution prior to having a hearing and that was my conversation with the victim's attorney. Maybe if we can all meet together and come to

some amount, it would at least show the victim – you know, help her out in her expenses.

THE COURT: So it's my understanding that they don't want to do that; is that right?

MS. WATSON: They did. I mean, they want full [6] restitution. They want the amount that's in these documents.

THE COURT: But they're willing to take less.

MS. WATSON: They were willing to let me negotiate prior to a hearing, but my understanding is that there's no room to negotiate.

THE COURT: But the defendant is not interested in that.

MS. WATSON: Correct. So at this time, I would ask for what the victim is requesting.

THE COURT: All right, Mr. Houlihan, tell me what you think I ought to do.

MR. HOULIHAN: Judge, I don't think that – well, first of all, I would just note that according to *Paroline*, that's 134 Supreme Court, 710, the government bears the burden of establishing by the preponderance of the evidence the victim's losses.

THE COURT: What can they use to do that? Can't they use affidavits?

MR. HOULIHAN: I don't believe that the affidavit they provided here is sufficient.

THE COURT: That doesn't answer my question. They can use affidavits, but you don't think this one is sufficient?

MR. HOULIHAN: I don't believe they can use affidavits.

THE COURT: You don't think they can.

MR. HOULIHAN: I think they have to produce witnesses. [7] I know in this case, *Paroline*, they produced an expert witness who testified in a Florida case. This predates *Paroline*, so I'm not so sure whether the holding as it relates to causation is still valid.

But in *United States versus McDaniel*, which is 631, F3, 1204, the government produced a Dr. Randall Green as an expert on the impact of psychological trauma, and that individual was present for cross-examination.

And what they've provided here is an evaluation that focuses almost exclusively on the actions of the father who sexually abused this victim and the impact of his actions upon her. There is about a half a paragraph in this seven page evaluation that he mentions – and by the way, the fact that these images are out there is continuing to harm her, but it's cursory and it doesn't – in my mind, isn't sufficient to establish proximate cause in this case.

I mean, in *Paroline*, the court mentioned that the court has to start or may start to determine the amount of the victim's losses caused by the continuing traffic in the victim's images, and then base an award on factors bearing on the relative causal significance of the defendant's conduct in producing those losses. They merely – this evaluation states at great length the damage caused by the father that produced these images, but it has no meaningful discussion of what damage was caused by or what continuing damage is caused by the [8] dissemination of these images.

The attorney's estimate of his expenses, there are a variety of things in here that I just don't know – I don't know what they are. For example, there is – there's something – well, let me step back. There are things – anticipated expenses for things like initial prep of parole opposition materials. Well, that's a nonissue in this case. Final prep of parole opposition materials. Notification of parole hearing. First of all, I don't know how they know that they would necessarily oppose, but it's sort of a nonissue because there is no parole in the federal system.

There are things in here conference with defense attorney. That hasn't happened. I mean, I know that personally that that hasn't happened.

There are things like VNS notices and defendant personal information, PACER. They're line items that I have no idea what they're for.

He goes on to base the rates and say that these rates are appropriate because, for example, one of the

lawyers who's billed out at $400 an hour, he says it's merited because that individual was a defense attorney for 15 years before joining this firm. Well, I've been a defense attorney for 15 years and nobody in their right mind –

THE COURT: I'd gladly pay you $400 an hour, Mr. Houlihan. Come on now.

[9] MR. HOULIHAN: I was just going to say nobody in their right mind would pay me that.

THE COURT: That's not inconsistent with the fact that they would.

MR. HOULIHAN: He talks about the paralegals being billed out at $150 an hour, and as a basis for that he says they're smart, kind and dedicated and they're lucky to have them. I'm sure that's all true, but Judge, to base an award on they're smart, kind and diligent, I mean, that's more than our CJA lawyers get, and I think they're at the very least smart and dedicated.

So, you know, I mean, these are just sort of – they're conclusory assertions.

THE COURT: What do you think is a fair amount?

MR. HOULIHAN: Based on this record? Zero, Judge. I'm sorry, they haven't proved it. They've got a burden of proof and they haven't met it. I've got a young man who – to the extent that he's able to earn anything, would like to send money to his family. And

he's told me listen, if I get out and I can find a job, which I think is exceedingly unlikely given the fact that I'm going to have to register for the rest of my life, if I can and I can make some money and I can send to it this girl, I'll do it.

But I just don't think based on the evidence before the court – we're sympathetic to this girl's plight, but I'm [10] sympathetic to my client as well and there is a burden of proof on the government and this just does not establish it, Judge. I mean, I have plenty more to say.

THE COURT: All right. But you acknowledge that they did give an affidavit, although you don't think it's sufficient.

MR. HOULIHAN: An affidavit from the attorney with regard to his expenses, including items that I know for a fact have not occurred like conference with defense attorney. So – you know, and things like parole hearing which don't exist. This is a boilerplate thing that he's printed off and produced and has no relationship with my particular client, and that's the only – and that, that information in his affidavit, frankly, I think is insufficient and that's stuff that he has personal knowledge of. The rest of it, there's no affidavits. There's an evaluation from a woman that I have no idea what her qualifications are.

You know, I have –

THE COURT: Do you quibble with his calculations in his letter or in his affidavit, I guess it is,

that concern the loss that she has in total which is substantially more than $17,000? I mean, I can't imagine how you could possibly accurately calculate the damage that has been done to this child and that continues to be done to this child as these videos are distributed.

You know, I don't even know – what did your client get [11] convicted of? Was distribution, wasn't it?

MR. HOULIHAN: No, Your Honor. It was –

THE COURT: Strictly possession?

MR. HOULIHAN: Well, I think this was a situation where –

THE COURT: This was Judge Jordan's case, correct?

MR. HOULIHAN: No, Judge. This was before Your Honor.

THE COURT: It was? I don't remember it. They all start to blend together.

MR. HOULIHAN: It was a plea. I mean, obviously wasn't a trial.

THE COURT: Okay.

MR. HOULIHAN: But he had images. As I understand it, I attempted to confirm this with the agent, she was not returning my –

THE COURT: Ms. Watson might know. She seems to be trying to tell us.

MS. WATSON: Just – there were a total of 1,200 image files, 182 videos. At least one of the videos was nine minutes and 53 seconds in length.

THE COURT: How many of them involve this "Angela" victim?

MS. WATSON: If you give me one second, I can count them.

MR. HOULIHAN: I can give you – it's approximately a [12] dozen.

THE COURT: A dozen what? Videos? Or –

MR. HOULIHAN: Images. I would say a dozen to a dozen and a half still images.

THE COURT: There are no videos of this victim.

MR. HOULIHAN: No. No. Not of this –

MS. WATSON: There were no videos. I'm just trying to pull up –

THE COURT: Goodness, you keep this on your phone?

MS. WATSON: You know, I do the –

MR. HOULIHAN: It's in – I apologize, Judge. It's probably more than that.

MS. WATSON: It looks like about 45 images.

MR. HOULIHAN: 45?

THE COURT: 45 still images.

MR. HOULIHAN: It is 45 images. I actually went and looked at the images. I didn't count them. I just made sure that there was at least one image that qualified.

THE COURT: Mr. Houlihan, here's my problem. Here we have a case where your client was convicted of possession of visual depictions of child pornography, victims of child pornography are entitled to compensation. Admittedly, it's not easy to compute what the compensation should be, but I'm looking through the plea agreement to see if it is of any assistance. I would think that I would have the right to listen to – I don't [13] think I have to have children come in and testify as to the effect of this on them. I think that I have the right to use my God-given common sense to say that this is obviously going to hurt them for the rest of their lives, and the question is how do you evaluate the amount of restitution that should be made?

And I think that you – the amount of restitution would be huge, but I don't think that your client is required to pay for all of it. And the question is how do you split it up? And it's a very difficult exercise, and I just think I got to do the best I can with it and I'm going to set a restitution figure on your client. Honestly, most of the restitution that I set is like a empiric exercise, like I'm making it up for the fun of it because I don't think very many of them ever pay more than a very,

very, very small percentage of the amount that is levied as restitution.

I think I have to come up with something that is restitution to this young woman who was a child at the time that these pictures were created. I hear you. Go ahead.

MR. HOULIHAN: I appreciate the court's sentiment and I understand what you're saying. But it would be my position that according to *Paroline* and according to Eleventh Circuit existing case law, the government bears the burden. I agree, this is a difficult calculation to make, but I don't think you can make a calculation if the government hasn't met its burden by producing witnesses who can testify and be subject to cross-examination [14] regarding where these figures come from. We have conclusory figures provided by a psychologist of unknown origin. I mean, I'm not suggesting that she's not who she purports to be, but I have no idea who she is.

And I just think on this record, Judge, on this record, the court is precluded from ordering restitution.

THE COURT: Ms. Watson?

MS. WATSON: Your Honor, my understanding about restitution is that the confrontation clause does not extend to restitution hearings. The government has provided an affidavit. The government has provided on page six of treatment needs detailed accounts of what this victim is going to need to pay over the course of her life to overcome what happened. And

this is – but for this industry existing, this abuse wouldn't have happened. But for the defendant downloading these 45 images of this four year old child being forced to perform oral sex on her father, you know, we wouldn't be here right now.

You can see on page six she is estimated at 50 to 100 sessions at $85 an hour for group therapy for victims of child sexual abuse. Familiar therapy at $200 a session. There's an estimated 150 to 200 sessions. Medical evaluation and management by a board certified psychiatrist, 75 to 100 sessions at $250 per session. I mean, anyone who has received any sort of medical treatment knows that these are routine costs associated with medical treatment, with mental health treatment, [15] anyone who has been in and out of the court.

So even if counsel is quibbling with $100 here or $200 there in terms of court fees, there's absolutely no doubt this victim is going to be paying for this both emotionally and out of her pocket for the rest of her life. The government has provided information to the court to that effect. Certainly the government is not asking for the total amount which –

THE COURT: 300, 400,000, a lot of money. Mid-six figures.

MS. WATSON: I would suggest in terms of calculating, this defendant had 45 images. The sessions, the mental health sessions, all of the treatment

sessions range between $85 a session and $200 a session. I would suggest $100 per image which would be $4,500 in restitution.

MR. HOULIHAN: Judge, let me just point out –

THE COURT: Go ahead.

MR. HOULIHAN: The numbers that this individual put into her report as to how many sessions are needed, there's just no indication as to how she came up with –

THE COURT: Well, but she didn't go by that. She went by 45 images, $100 an image.

MS. WATSON: A thousand dollars an image. It was $4,500 was my total.

THE COURT: Well, a thousand dollars an image is $45,000.

[16] MS. WATSON: 100. Yes. I'm sorry.

THE COURT: So $100. See, I was right. See the law of averages. I'm bound to be right once in a while.

You know what, Mr. Houlihan? I don't know the right answer to this. I hope that the Eleventh circuit will give me some guidance if they feel that I'm wrong on this, but I you have to just take a position on it and as far as I'm concerned, I believe that the young woman is entitled to some restitution from this defendant and I don't know of any other way of determining

it other than to come up with a per-image charge. And I think the $100 is a reasonable amount.

And I think that based on the materials submitted, which I believe, and I don't think that you can disregard them, I'm going to order restitution in the amount of $4,500 to the victim in this case and I'm prepared to make the formal announcement at this point.

Be happy to hear anything further from you.

MR. HOULIHAN: Judge, we stand by our objections.

THE COURT: I want to give the respondent or defendant, whatever it is, the opportunity to respond if he wishes.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Stay seated. It's easier to talk. You know what, hold it a second. Hold it a second. I think that you should be careful because I would assume that your attorney is going to – may or may not appeal this, and, you [17] know, whatever you say –

THE DEFENDANT: I'm not going to say anything to jeopardize that.

THE COURT: Okay. All right. I just want you to be aware. Go ahead.

THE DEFENDANT: All I wanted to say was I don't know who any of these people are and when I read – when I read the report and I read her story, it just broke my heart. And like my attorney said, I had

told him this when I spoke to him earlier this week, that if there was any way that I could pay for this later on, I would.

But right now, I don't have any money and any money that I make in here is going to be basically almost nothing and I want to send as much of that as I can to my family. My –

THE COURT: You know, I really understand that, but the fact of the matter is that that is what everyone can say in these matters, that you didn't know them. The problem is that if people didn't buy and distribute these images, there wouldn't be a market for them and perhaps children would not be as abused as often as they are. That's all I'm saying is that it doesn't matter if you knew them. You know, these materials are a permanent record of their participation in these sexual acts that were apparently forced upon them, and that's just a horrible situation and it's just made worse by the circulation of these documents. And, you know, just the possession of them [18] victimizes those children that are depicted in those images.

And while I understand that you want – you would like to spend your money the way you want to spend it, what little money you're going to be making, the fact of the matter is that I think that this victim is entitled to some compensation and so I'm going order it. I'll be happy to hear anything further that you might have to say. I just want you to know where I'm coming from.

MR. HOULIHAN: I don't think we have anything further at this time, Your Honor.

THE COURT: All right. Anything further from the government?

MS. WATSON: No thank you, Your Honor.

THE COURT: It is ordered the defendant shall pay restitution in the amount of $4,500.

During the period of incarceration, payment shall be made as follows:

If the defendant earns wages in a Federal Prison Industries UNICOR job, then the defendant must pay 50 percent of wages earned toward the financial obligations imposed by this judgment in a criminal case. If the defendant does not work in a UNICOR job, then the defendant must pay a minimum of $25 per quarter toward the financial obligations imposed in this order.

Upon release from incarceration, the defendant shall pay restitution at the rate of 10 percent of monthly gross [19] earnings until such time as the court may alter that payment schedule in the interests of justice. The US Bureau of Prisons, US Probation office and US Attorney's office shall monitor the payment of restitution and report to the Court any material change in the defendant's ability to pay. These payments do not preclude the government from using any other anticipated or unexpected financial gains, assets or income of the defendant to certify the restitution obligations. The restitution shall be made payable to Clerk, United States Courts and forwarded to US clerk's office, attention financial section, 400 North Miami Avenue, Room 8N09, Miami, Florida, 33128.

The restitution will be forwarded by the clerk of the court to the victim on the attached list.

Good luck to you, Mr. Manrique.

MR. HOULIHAN: Thank you, Judge.

THE COURT: We'll be in recess. Thank you. Thank you Ms. Martinez or cousin Marylis.

(PROCEEDINGS CONCLUDED)

United States District Court
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
v.	(Filed Sep. 18, 2014)
MARCELO MANRIQUE	Case Number: **14-20064-CR-MARTINEZ** USM Number: **02081-104** Counsel For Defendant: **Raymond D'Arsey Houlihan** Counsel For The United States: **Brooke Watson** Court Reporter: **Dawn Whitmarsh**

Date of Original Judgment: 6/23/2014
(or Date of Last Amended Judgment)

AMENDMENT REASON(S):
Modification of Restitution Order (18 U.S.C. §3664)

The defendant pleaded guilty to count(s) 1 of the Information.

The defendant is adjudicated guilty of these offense(s):

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
18 U.S.C.§ 2252(a)(4)(B)	possession of material involving the sexual exploitation of minors	01/10/2014	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence:
9/17/2014

/s/ Jose E. Martinez
Jose E. Martinez
United States District Judge

Date: 9/18/14

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **72 months** as to Count One of the Information.

The court makes the following recommendations to the Bureau of Prisons: The defendant shall be assigned to a facility as close to South Florida as possible commensurate with his background and the offence of which he stands convicted.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

_____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **life** as to Count One.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony,

unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

Adam Walsh Act Search Condition – The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation

officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Computer Possession Restriction – The defendant shall not possess or use any computer; except that the defendant may, with the prior approval of the Court, use a computer in connection with authorized employment.

Employer Computer Restriction Disclosure – The defendant shall permit third party disclosure to any employer or potential employer, concerning any computer-related restrictions that are imposed upon the defendant.

Mental Health Treatment – The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

No Contact with Minors – The defendant shall have no personal, mail, telephone, or computer contact with children/minors under the age of 18 or with the victim.

No Contact with Minors in Employment – The defendant shall not be employed in a job requiring contact with children under the age of 18 or with the victim.

No Involvement in Youth Organizations – The defendant shall not be involved in any children's or youth organization.

Restricted from Possession of Sexual Materials – The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Self-Employment Restriction – The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Sex Offender Registration – The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

Sex Offender Treatment – The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination.

Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$100.00	$0.00	**$4,500.00**

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

NAME OF PAYEE	TOTAL LOSS*	RESTITUTION ORDERED	PRIORITY OR PERCENTAGE
Marc C. Lenahan	$0.00	$4,500.00	

Restitution with Imprisonment – It is further ordered that the defendant shall payment restitution in the amount of **$4,500.00**. During the period of incarceration, payment shall be made as follows: (1) if the

defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendnat must pay a minimum of $25.00 per quarter toward the financial obligations imposed in this order.

Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the Court any material change in the defendant's ability to pay. These payments do not preclude the government from using any other anticipated or unexpected financial gains, assets or income of the defendant to satisfy the restitution obligations. The restitution shall be made payable to Clerk, United States Courts, and forwarded to the address below.

The restitution will be forwarded by the Clerk of the Court to the victims on the attached list.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of $100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount,

Joint and Several Amount, and corresponding payee, if appropriate.

CASE NUMBER DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)	**TOTAL AMOUNT**	**JOINT AND SEVERAL AMOUNT**

The Defendant's right, title and interest to the property identified in the preliminary order of forfeiture, which has been entered by the Court and is incorporated by reference herein, is hereby forfeited.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-13029
Non-Argument Calendar

D.C. Docket No. 1:14-cr-20064-JEM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCELO MANRIQUE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(July 15, 2015)

Before TJOFLAT, WILSON and BLACK, Circuit Judges.

PER CURIAM:

Marcelo Manrique appeals his life term of supervised release and the restitution award ordered after he pled guilty to one count of possession of material involving a minor engaging in sexually explicit

conduct, in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2). On appeal, he argues: (1) the district court erred procedurally in imposing a life term of supervised release because it failed to adequately explain the sentence and consider the required 18 U.S.C. § 3553(a) factors; (2) the life term of supervised release was substantively unreasonable; and (3) the district court imposed an erroneous restitution amount. We will address each of these contentions in turn. After review, we affirm.

I. DISCUSSION

As the parties are familiar with the facts of this case, we will not recount them in detail. We include only those facts necessary to the discussion of each issue.

A. Procedural Reasonableness

The reasonableness of a sentence is generally reviewed through a two-step process. *United States v. Pugh*, 515 F.3d 1179, 1190 (11th Cir. 2008). The first step is to "ensure that the district court committed no significant procedural error such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Gall v. United States*, 552 U.S. 38, 51 (2007).

Manrique did not clearly articulate an objection to his sentence on procedural grounds, and therefore we review his procedural reasonableness claim for plain error. *See United States v. Vandergrift*, 754 F.3d 1303, 1307 (11th Cir. 2014) (stating when a party does not clearly articulate an objection on procedural grounds at the time of sentencing, plain error review is appropriate). The record shows the district court stated it had considered the § 3553(a) factors before announcing its total sentence, and added it thought the sentence was fair in light of all of the § 3553(a) factors. Additionally, the court stated it had considered the parties' arguments – such as Manrique's argument in favor of a 15-year term of supervised release. Moreover, Manrique does not argue the court improperly calculated or failed to calculate the Guidelines range, and the record reflects the court referred to the Guidelines as advisory, indicating it did not treat them as mandatory. Manrique also does not point to any clearly erroneous facts upon which the district court based his term of supervised release, nor does the record reveal any. As to Manrique's argument the district court did not adequately explain the sentence, the court explained it did not think Manrique was a danger to recidivate and the sentence was sufficient but not excessive to perform a deterrent function. Considering the court imposed a Guidelines term of supervised release, the explanation was sufficient to demonstrate the court considered the parties' arguments and had a reasoned basis for exercising its authority. *See Rita v. United States*, 551 U.S. 338, 356 (2007) ("The sentencing judge should set forth enough to satisfy the

appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority."). For the foregoing reasons, Manrique cannot show plain error. *United States v. Rodriguez*, 398 F.3d 1291, 1298 (11th Cir. 2005) (stating under plain error review, there must be (1) an error, (2) that is plain, (3) that affect the defendant's substantial rights, and (4) seriously affects the fairness or integrity of the judicial proceedings).

B. Substantive Reasonableness

The second step when determining the reasonableness of a sentence is review for substantive reasonableness. *United States v. Talley*, 431 F.3d 784, 788 (11th Cir. 2005). Substantive reasonableness review seeks to "evaluate whether the sentence imposed by the district court fails to achieve the purposes of sentencing as stated in section 3553(a)." *Id.* The court must impose a sentence "sufficient, but not greater than necessary to comply with the purposes" listed in § 3553(a)(2), including the need to reflect the seriousness of the offense, deter criminal conduct, and protect the public from the defendant's future criminal conduct. *See* 18 U.S.C. § 3553(a)(2). In imposing a particular sentence, the court must also consider the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the applicable Guidelines range, pertinent policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims. *Id.* § 3553(a)(1), (3)-(7).

The Sentencing Guidelines state the term of supervised release may be up to life if the offense at issue is a sex offense, and recommend the statutory maximum term of supervised release if the offense of conviction is a sex offense. U.S.S.G. § 5D1.2(b)(2). The statutorily authorized term of supervised release for a § 2252 offense is five years to life. 18 U.S.C. § 3583(k).

The record shows the district court weighed the § 3553(a) factors when deciding on a sentence, and it was not necessary for it to lay them out one by one. *See United States v. Robles*, 408 F.3d 1324, 1328 (11th Cir. 2005) (stating district courts do not have to conduct an accounting of every § 3553(a) factor and explain the role each played in the sentencing decision). Still, it specifically discussed the need for deterrence balanced with its belief Manrique was not a recidivism risk. Even if the court favored some factors over others, it was within its discretion to do so. *See United States v. Brown*, 772 F.3d 1262, 1267 (11th Cir. 2014) (stating it is within the court's discretion to afford one factor greater weight). Furthermore, the sentence imposed by the district court was within the Guidelines range, and was in accord with the Guidelines' recommendation that the supervised release term be the statutory maximum, which indicates reasonableness. *See Talley*, 431 F.3d at 788 ("[W]hen the district court imposes a sentence within the advisory Guidelines range, we ordinarily will expect that choice to be a reasonable one."). Based on the foregoing, the district court's decision to impose a life term of supervised release does not leave a "definite and firm conviction" that it committed a

clear error in judgment. *See United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc) (stating we will vacate a sentence imposed by a district court only when left with a "definite and firm conviction that the district court committed a clear error of judgment").

C. Restitution

We must resolve jurisdictional issues before addressing the merits of underlying claims, and have an obligation to review *sua sponte* whether we have jurisdiction. *United States v. Cartwright*, 413 F.3d 1295, 1299 (11th Cir. 2005). Absent the filing of a timely notice of appeal, we are without jurisdiction to review the decision on the merits. *Id.* We review questions regarding our subject matter jurisdiction *de novo*. *Id.*

We previously held an appeal from a sentencing judgment that deferred restitution was premature and did not ripen until the district court either (1) ordered restitution or (2) lost the power to do so after 90 days. *See United States v. Kapelushnik*, 306 F.3d 1090, 1093-94 (11th Cir. 2002). However, the Supreme Court later held "[t]he fact that a sentencing court misses the statute's 90-day deadline . . . does not deprive the court of the power to order restitution." *Dolan v. United States*, 560 U.S. 605, 611 (2010). We subsequently recognized, in light of *Dolan*, the *Kapelushnik* framework created an injustice because it was possible for an appeal to never ripen, and addressed whether judgments that deferred the issue of restitution were nevertheless final for appellate jurisdiction purposes. *United States v.*

Muzio, 757 F.3d 1243, 1246 (11th Cir.), *cert. denied* 135 S. Ct. 395 (2014).

In *Muzio*, the district court entered a judgment sentencing the defendant to 163 months' imprisonment and stating restitution would be ordered but the determination of the amount would be deferred for 90 days, with an amended judgment entered after such determination. *Id.* at 1245. The defendant appealed that judgment, and an amended judgment reflecting the amount of restitution was never entered. *Id.* at 1245-46. However, we determined judgment was nonetheless final for purposes of appeal because it sentenced the defendant to a term of imprisonment. *Id.* at 1247 We concluded "a judgment imposing a prison sentence and restitution but leaving the specific amount of restitution unsettled is immediately appealable." *Id.* at 1250. We acknowledged the rule could "lead to bifurcation of some defendants' cases," but stated "[i]f a subsequent judgment is entered ordering restitution, the defendant may separately appeal that order, and the appeal may be heard separately or consolidated with the initial appeal if that has not yet been resolved," or a defendant could avoid bifurcation by waiting to appeal until restitution was resolved. *Id.* As such, we held when courts enter sentencing judgments ordering restitution but deferring determination of the amount, defendants have the option to either (a) timely appeal from the initial judgment and then, if desired, timely appeal from the subsequent judgment finalizing the amount of restitution, or (b) timely appeal from the subsequent judgment only, in which case all issues will be heard in a single appeal. *Id.* at 1250 n.9.

We do not have jurisdiction to entertain Manrique's challenge to his restitution amount because he did not file a notice of appeal designating the amended judgment setting forth the restitution amount. *See Cartwright*, 413 F.3d at 1299. In his reply brief, Manrique argues *Muzio* is inapplicable because the amended judgment was never filed in that case, but *Muzio*'s discussion of a bifurcated appeals process shows its ruling also applies in situations such as this where an amended judgment was later filed. *See Muzio*, 757 F.3d at 1250. Manrique also argues his premature notice of appeal ripened following the entry of the amended judgment, but that argument relies on the *Kapelushnik* framework, which *Muzio*'s framework replaced. *See id.* at 1246. Under *Muzio*, Manrique was required to either appeal both the original judgment and the amended judgment, or appeal the amended judgment only. *Id.* at 1250 n.9. Instead, he appealed only the original judgment. Therefore, Manrique's challenge to the restitution order is dismissed for lack of jurisdiction. *See Cartwright*, 413 F.3d at 1299.

II. DISCUSSION

Accordingly, we affirm Manrique's sentence as set forth in the district court's original judgment, and dismiss his challenge to the restitution amount reflected in his amended judgment for lack of jurisdiction.

AFFIRMED IN PART, DISMISSED IN PART.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-13029-BB

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCELO MANRIQUE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(Filed Sep. 11, 2015)

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, WILSON and BLACK, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc

(Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT

/s/ Susan H. Black
UNITED STATES CIRCUIT JUDGE